

COURT OF APPEALS  
DIVISION TWO

¶1 After a jury trial, petitioner Kevin Williams was convicted of four counts of sexual conduct with a minor under the age of fifteen. The trial court sentenced him in August 1999 to consecutive, presumptive prison terms of twenty years on each count. This court affirmed the convictions and sentences on appeal. *State v. Williams*, No. 2 CA-CR 99-0383 (memorandum decision filed Aug. 30, 2001). Thereafter, Williams commenced this post-conviction proceeding pursuant to Rule 32, Ariz R. Crim. P. His counsel filed a notice of Williams's filing a pro se petition in which he raised numerous claims. Williams filed pro

se supplements as well, and another attorney, the one now representing him on review, filed a supplemental petition. The trial court denied relief after evidentiary hearings in the spring and summer of 2004 and oral argument in February 2007. In this petition for review, Williams challenges the court's denial of his request that his convictions be vacated and that he be given a new trial.

¶2 Whether a defendant is entitled to post-conviction relief is for the trial court to decide in the exercise of its discretion. Absent a clear abuse of that discretion, we will not disturb the trial court's ruling on appeal. *See State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986). Although Williams states at the beginning of his petition for review that he "presents all issues that he argued below to this Court for review," he only argues one claim: that trial counsel was ineffective because he failed to obtain and introduce telephone records to refute testimony by the victim's cousin that Williams had called the cousin from jail and admitted having had sexual relations with the victim. Such summary reference to the claims raised below does not place them before this court for review. Williams failed to comply with the requirements of Rule 32.9, and we will not address claims presented in this manner.

¶3 Nor has Williams sustained his burden of establishing the trial court abused its discretion by denying post-conviction relief based on the ineffectiveness of counsel. To be entitled to relief on this ground, a defendant must establish that counsel's performance fell below standards of reasonableness based on prevailing professional norms and that this deficient performance was prejudicial. *Strickland v. Washington*, 466 U.S. 668, 687-88, 104 S. Ct. 2052, 2064-65 (1984); *State v. Lee*, 142 Ariz. 210, 214, 689 P.2d 153, 157

(1984). Denying relief on this claim after oral argument in February 2007, the trial court stated simply, “the absence of the phone records does not constitute ineffective assistance of counsel.” We agree.

¶4 Even assuming, arguendo, that counsel had performed deficiently by failing to obtain the telephone records, Williams has not established that, but for the missing records, the outcome of the trial would have been different. The evidence against him was overwhelming. It established that he had repeatedly engaged in sexual intercourse with his girlfriend’s thirteen-year-old daughter, who testified about the many occasions on which Williams had intercourse with her. Shortly before Williams’s trial, the victim gave birth to twins; deoxyribonucleic acid (DNA) evidence established “to a reasonable degree of scientific certainty,” as we stated in our memorandum decision in the appeal, that Williams was the father. No. 2 CA-CR 99-0383, ¶ 25. Telephone records casting doubt on whether Williams had admitted to the victim’s cousin that he had had sex with the victim would have had scant effect, given the other, highly persuasive evidence establishing his guilt.

¶5 We grant Williams’s petition for review, but, because he has not shown the trial court abused its discretion, we deny relief.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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PHILIP G. ESPINOSA, Judge

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GARYE L. VÁSQUEZ, Judge